

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
)	Adversary Proceeding
TIMOTHY SMALL)	
CASSANDRA LYNN SMALL)	Number <u>95-2053</u>
(Chapter 7 Case <u>92-20813</u>))	
)	
<i>Debtors</i>)	
)	
)	
FARMER'S FURNITURE)	
)	
<i>Plaintiff</i>)	
)	
v.)	
)	
TIMOTHY SMALL)	
CASSANDRA LYNN SMALL)	
)	
<i>Defendants</i>)	

MEMORANDUM AND ORDER

Pursuant to 11 U.S.C. Section 727(a)(2) and Section 727(a)(5), Plaintiff filed this objection to the discharge of the balance due for merchandise purchased by Debtors under the terms of a retail installment contract dated August 12, 1992. Plaintiff

asserts that the Debtors are barred from receiving a general discharge because they "with intent to hinder, delay, or defraud" Plaintiff, have "transferred, removed, destroyed, or concealed" Plaintiff's property, and because Debtors have "failed to explain satisfactorily, before determination of denial of discharge, any loss of assets or deficiency of assets to meet defendant's liabilities."

FINDINGS OF FACT

On August 12, 1992, Debtors/Defendants entered into a Retail Installment Contract with Plaintiff for the purchase of certain personal property and granted Plaintiff a security interest in same. The purchase price, excluding tax, insurance coverage, and finance charges, was \$2,395.00. On November 16, 1992, Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code. Plaintiff was properly scheduled as a creditor and sent a copy of the Debtors' proposed Chapter 13 plan. Debtors' plan placed a value on Plaintiff's collateral of \$2,700.00. Plaintiff filed a proof of claim in the amount of \$2,754.78 which included various insurance charges and sales tax and was bifurcated into a secured claim of \$2,700.00 and an unsecured claim of \$54.78.

Debtors filed an amended Chapter 13 plan on March 26, 1993. The amended plan did not substantially alter Plaintiff's claim, although disbursement to Plaintiff was delayed. Plaintiff did not object to either the original or the amended plan, and the plan was confirmed on April 6, 1993.

Debtors had difficulty making payments under the terms of their confirmed plan, but did so until the Chapter 13 Trustee moved for dismissal in July of 1995. They converted their case to a Chapter 7 on August 10, 1995. The Debtors also lost their vehicle at that time.

During the pendency of the Chapter 13 case, the "recliner sofa" that Debtors purchased from Plaintiff wore out. While in the process of relocating to another residence, the "recliner sofa" buckled in the center and became unusable. Debtors attempted to repair the sofa; however, they eventually determined that it was beyond repair and subsequently discarded it at a landfill. The lamps purchased from Plaintiff were also damaged and discarded, but the Debtor/Wife is still in possession of the end tables.

CONCLUSIONS OF LAW

"A creditor alleging intent to defraud under Section 727(a)(2)(A) bears the considerable burden of demonstrating actual fraudulent intent; constructive fraud is insufficient." In re Miller, 39 F.3d 301, 306 (11th Cir.1994). As in the case of statutory exceptions to discharge, general bars to discharge in bankruptcy are narrowly construed, and the creditor opposing discharge must prove the debt falls within an exception. In re Belfry, 862 F.2d 661, 662 (8th Cir.1988). The bankruptcy court must construe all exceptions to discharge "strictly," with the benefit of any doubt going to the debtor. In re Ward, 857 F.2d 1082, 1083 (6th Cir.1988). The objecting creditor has the burden of proving each necessary

element by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991). "If any one of the elements is not met, the debt is dischargeable." In re Miller, *supra*, at 304.

Moreover, courts generally construe the statutory exceptions to discharge in bankruptcy "liberally in favor of the debtor," and recognize that "the reasons for denying discharge . . . must be real and substantial, not merely technical and conjectural." In re Tully, 818 F.2d 106, 110 (1st Cir.1987); In re Miller, *supra*, at 304.

The elements defined in Section 727(a)(2)(A) require willful acts of the debtor taken with the intent to defraud a creditor. The record in this case simply shows Debtors, unsophisticated in the ways of business, wore out a piece of furniture and then disposed of it. Their motivation was not to defraud Plaintiff, but rather to dispose of useless furniture. A disposition of this sort is not tantamount to a fraudulent transfer for the purposes of denying discharge. *See Miller*, *supra*, at 304.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the objection to discharge filed by the Plaintiff, Farmer's Furniture, is OVERRULED.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 1996.